

**United States Department of Labor
Employees' Compensation Appeals Board**

C.H., Appellant)

and)

SMITHSONIAN INSTITUTION, PENNSY)
COLLECTIONS & SUPPORT CENTER,)
Landover, MD, Employer)

**Docket No. 20-0440
Issued: August 3, 2020**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 19, 2019 appellant filed a timely appeal from an October 15, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a left inguinal hernia causally related to the accepted March 4, 2019 employment incident.

FACTUAL HISTORY

On March 6, 2019 appellant, then a 52-year-old exhibition specialist, filed a traumatic injury claim (Form CA-1) alleging that on March 4, 2019 he sustained a possible groin hernia

¹ 5 U.S.C. § 8101 *et seq.*

when lifting an acrylic panel while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that he was injured in the performance of duty on March 4, 2019. Appellant did not stop work.

A March 28, 2019 letter from the employing establishment noted appellant's date of injury as March 4, 2019 and indicated that he was diagnosed with a hernia and required surgery. It requested authorization for the surgery and noted that his continuation of pay (COP) coverage would run out prior to his return to work.

In an April 3, 2019 development letter, OWCP notified appellant that when his claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work, and since the employing establishment had not controverted COP or challenged the case, a limited amount of medical expenses were administratively approved and paid. It noted that it had reopened the claim for formal consideration because he had requested authorization for surgery. OWCP informed appellant that additional factual and medical evidence were required to establish his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested evidence.

A March 7, 2019 medical report by Dr. Seth Garber, Board-certified in family medicine, indicated that appellant stated that he started experiencing left groin pain four days ago right after lifting a large sheet of acrylic. Appellant's pain improved when sitting and resolved when lying down. When he woke up the next day, the pain was gone and he had not experienced pain since then. Dr. Garber reviewed appellant's medical history and conducted a physical examination which revealed a normal inguinal canal, normal testes, and no hernia. He diagnosed left groin pain and additionally indicated that appellant may have a groin strain or an inguinal hernia.

A March 12, 2019 medical report by Dr. Garber indicated that appellant presented with abdominal pain and a possible hernia. Appellant related that on that day he pushed something heavy at work which caused the pain in the exact same spot in his left groin to return. Dr. Garber conducted a physical examination which revealed no abdominal tenderness, a normal inguinal canal, and no hernia. He diagnosed left groin pain and opined that appellant could have strained a muscle, but he was highly suspicious that appellant sustained a hernia.

On April 15, 2019 appellant completed OWCP questionnaire and related that on March 4, 2019 he was installing cases for an exhibit when he lifted a large acrylic panel that was approximately 70 pounds and felt a sharp pain in his lower left groin. He then moved the panel to its former place with assistance and sat down until the extreme pain subsided. Appellant noted that his pain subsided the next day, and he stated that he did not sustain any other injuries between the date of his injury and the date his injury was first report to his supervisor or physician. He related that he did not have any similar symptoms or conditions prior to his workplace injury.

By decision dated May 6, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed condition in connection with the accepted March 4, 2019 employment incident. It concluded therefore that the requirements had not been met to establish an injury as defined by FECA.

In a March 28, 2019 letter to Dr. Garber, Dr. Mohammed Kalan, a Board-certified surgeon, indicated that appellant presented that day with intermittent pain in a specific spot behind appellant's left testicle that was associated with and aggravated by strenuous activity. He noted that an examination revealed no evidence of an inguinal hernia and there was no obvious testicular pathology. Dr. Kalan indicated that he suspected that appellant's pain was due to a pulled muscle or ligament.

An April 16, 2019 ultrasound report by Dr. Kalan indicated that a limited ultrasound examination was performed on the area of pain in appellant's left groin. It revealed a discrete fascial defect on the floor in the left inguinal canal measuring about 6.2 mm, consistent with a left inguinal hernia. Dr. Kalan's impression indicated that the ultrasound displayed a reducible left inguinal hernia.

A June 10, 2019 letter by Dr. Kalan indicated that appellant was scheduled to undergo surgery to repair his left inguinal hernia on June 26, 2019. He stated that appellant must be off of work for the week after his surgery, and then upon his return to work he should be on light duty and only lift 20 pounds or less for 5 to 7 weeks. Dr. Kalan indicated that after that period appellant could return to full-duty work.

On July 23, 2019 appellant requested reconsideration.

A July 19, 2019 letter by Dr. Kalan indicated that on March 28, 2019 appellant presented with left groin pain that started four days ago due to lifting a heavy acrylic panel at work. He did not find an inguinal hernia upon physical examination so he ordered an ultrasound, and the ultrasound demonstrated that appellant had a left inguinal hernia. Dr. Kalan explained that most inguinal hernias in men are present since birth, but do not manifest until an event of high intra-abdominal pressure, such as lifting something heavy. He opined that, due to the nature of inguinal hernias, it is impossible to definitively say that appellant's hernia was caused when he lifted a heavy item. Dr. Kalan stated that he could "say with some confidence" that appellant had a disposition for developing a mature hernia since birth, and the heavy lift of the acrylic panel was the event that caused the hernia to be pushed out of appellant's groin and manifest, which caused his pain. He stated that it was impossible to know for certain when appellant first had the hernia, but his own explanation is a very reasonable and likely explanation of appellant's history of injury. Dr. Kalan related that he conducted surgery on appellant on July 1, 2019 and he indicated that at that time he was able to confirm that appellant had a hernia.

By decision dated October 15, 2019, OWCP modified its May 6, 2019 decision, finding that the evidence of record was sufficient to establish a diagnosed condition. However, it continued to deny the claim, as the evidence of record was insufficient to establish causal relationship between appellant's diagnosed condition and the accepted March 4, 2019 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,³ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and this component can be established only by medical evidence.⁶

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁷ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.⁸

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the

² *Id.*

³ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.⁹

ANALYSIS

The Board finds that this case is not in posture for decision.

Appellant alleged that he sustained an injury on March 4, 2019 while lifting an acrylic panel in the performance of duty. OWCP has accepted that the March 4, 2019 incident occurred as alleged. Dr. Kalan's July 19, 2019 letter indicated that appellant presented with left groin pain due to lifting a heavy acrylic panel at work. He conducted a physical examination and reviewed an ultrasound which revealed a left inguinal hernia. Dr. Kalan explained that most inguinal hernias in men are present since birth, but do not manifest until an event of high intra-abdominal pressure, such as lifting something heavy. He opined that appellant had a disposition for developing a mature hernia since birth, and the heavy lift of the acrylic panel was the event that caused the hernia to be pushed out of appellant's groin and manifest.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.¹⁰

Dr. Kalan is a Board-certified orthopedic surgeon who is qualified in his field of medicine to render rationalized opinions on the issue of causal relationship, and he provided a comprehensive understanding of the claimed mechanism of injury. He related that inguinal hernias in men were typically present at birth, however lifting a heavy object, like the acrylic panel appellant lifted at work, pushed the hernia out of his groin and manifest the hernia. The Board finds that, although his July 19, 2019 medical report is insufficiently rationalized to meet appellant's burden of proof to establish his claim, it does explain a physiological process by which the accepted incident could have caused or aggravated the diagnosed hernia condition. Dr. Kalan's July 19, 2019 medical report therefore raises an uncontroverted inference of causal relationship between appellant's claimed hernia condition and the accepted employment incident. Further, development of appellant's claim is therefore required.¹¹

On remand OWCP shall prepare a statement of accepted facts setting forth the accepted employment incident and refer appellant to an appropriate second opinion physician for an examination and a rationalized medical opinion as to whether the accepted employment incident either caused or aggravated the diagnosed hernia condition.¹² If the second opinion physician

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *V.W.*, Docket No. 19-1537 (issued May 13, 2020); *N.C.*, Docket No. 19-1191 (issued December 19, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹⁰ *Y.D.*, Docket No. 19-1200 (issued April 6, 2020).

¹¹ See *K.T.*, Docket No 19-1436 (issued February 21, 2020).

¹² *Supra* note 9 at Chapter 2.805.3e (January 2013). See *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

disagrees with the pathophysiological explanation provided by Dr. Kalan, he or she must provide a fully-rationalized explanation explaining why Dr. Kalan's opinion is unsupported. After this and other such further development deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceeding consistent with this decision of the Board.

Issued: August 3, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board